

Utility Management Agreement

Between

**The City of Goodnews Bay
and**

The Goodnews Bay Water & Sewer Utility Board

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**UTILITY MANAGEMENT SERVICES AGREEMENT
BETWEEN
THE CITY OF GOODNEWS BAY
AND
GOODNEWS BAY WATER & SEWER UTILITY BOARD.**

This Utility Management Services (this "Agreement") is entered into this _____ Day of _____, 1999 by and between the City of Goodnews Bay, a second class city and political subdivision of the State of Alaska (hereinafter referred to as the "CITY"), and Goodnews Bay Water & Sewer Utility Board, a non-profit formed under the laws of the State of Alaska (hereinafter referred to as " Goodnews Bay Water & Sewer Utility Board".

WITNESSETH

WHEREAS, the CITY presently owns and operates the City of Goodnews Bay Water and Sewer System, including water, sewer and laundromat services for the residents of Goodnews Bay (the "System"); and

WHEREAS, the parties desire that THE GOODNEWS BAY WATER & SEWER UTILITY BOARD provide services as the CITY's agent for the operation of the System pursuant to the following terms and conditions:

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1 - SERVICES

- 1.1 The "System". The System consists solely of those facilities, assets, inventories and interests including, without limitation, property commonly known as the Goodnews Bay washeteria, water treatment plant, sewage collection system, sewage treatment facility, sewage lagoon, leach field, appurtenant pipes and equipment, utility easements of record and the real property and those permits held by the CITY and utilized exclusively for the System.
- 1.2. Retention of THE GOODNEWS BAY WATER & SEWER UTILITY BOARD to Operate the System and provide Services. The CITY hereby retains THE GOODNEWS BAY WATER & SEWER UTILITY BOARD to provide, and THE GOODNEWS BAY WATER & SEWER UTILITY BOARD hereby agrees to provide, Services (as hereinafter defined) to CITY as CITY's agent, and to manage on behalf of the CITY the operation of the System, subject to all of the terms, conditions and provisions of this Agreement. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall render all Services pursuant to the terms of this Agreement to the CITY. It is the intention of THE GOODNEWS BAY WATER & SEWER UTILITY BOARD and the CITY that THE GOODNEWS BAY WATER & SEWER UTILITY BOARD assume through this agreement all responsibility and liability for operating the System and receive all Revenues from the System, and that the CITY retains the right to receive the System back from THE GOODNEWS BAY WATER & SEWER UTILITY BOARD upon termination or expiration of this Agreement.
- 1.3. Services. As used in this Agreement, the term "Services" shall include:

- (a) Operations: Operating the System;
- (b) Supervision: Supervising THE GOODNEWS BAY WATER & SEWER UTILITY BOARD employees in the conduct of their duties relative to the System;
- (c) Operations and Routine Maintenance: THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall conduct and complete all reasonable and prudent maintenance operations of the System sufficient to ensure its reliable and efficient, continued operation, and to prevent the deterioration or degradation of the System. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD may make capital improvements to the System for which it can obtain financing other than from the CITY, but neither the CITY nor THE GOODNEWS BAY WATER & SEWER UTILITY BOARD is obligated to make such improvements.
- (d) Administration: These duties include planning, budgeting, recordkeeping, reporting, accounting, billing and collections, drafting procedures manual, and general supervision of the operation and maintenance of the System;
- (e) Conformity with Laws, Ordinances, Regulations and Permits: THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall provide Services strictly in conformity with all valid and applicable laws, Ordinances, rules and regulations of any governmental authority having jurisdiction, and in conformity with the Permits, including, without limitation, the Alaska Public Utilities Commission ("APUC"), the Alaska Department of Environmental Conservation, the Environmental Protection Agency, and the U.S. Army Corps of Engineers.

SECTION 2 - COMPENSATION

- 2.1 CITY's Compensation: THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall pay to the CITY one dollar (\$1.00) per year during the term of this agreement.
- 2.2 THE UTILITY BOARD'S Cost and Compensation: THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall perform all Services and satisfy its other obligations under this Agreement by utilizing user fees, rates paid by ratepayers, charges and other revenues it receives from operation of the System thereunder, and any grants it may receive from any governmental sources. The CITY shall have a duty and obligation to continue to support the utility until such time as it is self-supporting.

SECTION 3 - TERM

- 3.1 Term: The term of this Agreement shall commence upon the Effective Date of this Agreement and shall expire on July 1, 2019, except as provided in Section 3.2.
- 3.2 Extension of term: Within one year prior to the end of the initial term, THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall have the right to extend the Term for an additional period of ten (10) years upon giving the CITY written notice and payment to the CITY of the first year's fee of One Dollar (\$1.00). THE GOODNEWS BAY WATER & SEWER UTILITY BOARD may continue to extend the Term from time to time for successive ten (10) year periods on the same terms and conditions as are set forth herein. The Term of this Agreement may be revised by mutual consent of THE GOODNEWS BAY WATER & SEWER UTILITY BOARD and the CITY. The

CITY and THE GOODNEWS BAY WATER & SEWER UTILITY BOARD agree to review this Agreement every three years or at any time if requested by either party in writing.

SECTION 4 - THE SYSTEM

- 4.1 The System is provided and accepted on an "As-Is Where-Is" Basis without Warranties of Any Kind: The System is provided by the City under this Agreement without warranty or liability of any kind whatsoever, including no warranty of merchantability or of fitness for any intended purpose. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD has had an unrestricted opportunity to review all CITY records and to inspect the System prior to entering into this Agreement.
- 4.2 THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall not be held responsible for the condition of property or equipment upon expiration of this Agreement, and shall have no responsibility to replace property or equipment, except as may result from THE UTILITY BOARD'S failure to complete ordinary and reasonable maintenance, or to operate the System in compliance with the standards of the industry.

SECTION 5 - REVERSIONARY CLAUSE

- 5.1 Reversionary Clause: Should THE GOODNEWS BAY WATER & SEWER UTILITY BOARD cease to be a non-profit corporation in good standing under the laws of the State of Alaska, the CITY shall give THE GOODNEWS BAY WATER & SEWER UTILITY BOARD written notice. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall have thirty (30) days to reinstate itself as a non-profit corporation under the laws of the State of Alaska. If THE GOODNEWS BAY WATER & SEWER UTILITY BOARD fails to do so, then all property and equipment, including any new construction which is then in THE UTILITY BOARD'S control, shall revert to the public domain and be returned to the CITY. Real property leased under this agreement may not be sub-leased by THE GOODNEWS BAY WATER & SEWER UTILITY BOARD or otherwise disposed of without the express written permission of the CITY throughout the term of this Agreement, which permission shall not be unreasonably withheld.

SECTION 6 - PRIOR AGREEMENTS

- 6.1 Prior Agreements: Prior to executing this Agreement, the CITY agrees to disclose any prior agreements for water and sewer service by utility customers or any other agreements made on behalf of the System which may affect the revenue and expense expectations of THE UTILITY BOARD, including but not necessarily limited to Waste Heat Agreements, arrangements made for water services, informal agreements, etc. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD enters into this Agreement and agrees to operate the System expressly subject to the terms of any and all such agreements which remain in effect as of the date of this Agreement. Upon request by THE UTILITY BOARD, the CITY shall assign to THE GOODNEWS BAY WATER & SEWER UTILITY BOARD any such agreements as may be identified by THE UTILITY BOARD.

SECTION 7 - UTILITY REVENUE

- 7.1 Utility Revenue: THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall receive all revenues generated by sales of water, sewer, and laundromat services from the Effective Date of this Agreement forward. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall continue to collect the CITY's accounts receivable arising in connection with sales of water, sewer and laundromat services in the ordinary course of THE UTILITY BOARD'S collection efforts, but THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall have no obligation to undertake extraordinary collection efforts, including, without limitation, litigation. In the case of the collection of delinquent revenues which may date back prior to the signing of this Agreement, THE GOODNEWS BAY WATER & SEWER UTILITY BOARD will receive these revenues.

SECTION 8 - AGREEMENT DISPUTES

- 8.1 Disputes Concerning This Agreement: Every effort will be made to solve disputes concerning this Agreement informally between the Goodnews Bay City Administrator and the Goodnews Bay Water & Sewer Utility Board - Utility Manager. Should these individuals not be able to come to an informal agreement as to the strict application, interpretation and terms of the Agreement then the matter will be referred to the City Council of Goodnews Bay and the Goodnews Bay Water & Sewer Utility Board - Board of Directors for their consideration. In the event of a disagreement or should an item need clarification, these matters should be placed in writing and forwarded to:

City of Goodnews Bay
City Administrator
P.O. Box 70
Goodnews Bay, Alaska 99589
Phone: (907) 967-8614
FAX: (907) 967-8124

Goodnews Bay Water & Sewer Utility Board
Utility Manager
P.O. Box _____
Goodnews Bay, AK 99589
Phone: (907) 967-8199
FAX: (907) 967-8199

The direction concerning cooperation throughout the implementation of this Agreement shall be that the City Council and the Goodnews Bay Water & Sewer Utility Board- Board of Directors shall work together in mutual best interest in order to ensure a smooth transition in the utility transfer.

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, that is not resolved using the procedure described above shall be settled by a mutually agreed upon arbitrator from Alaska, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

SECTION 9 - AMENDMENTS

- 9.1 Amendment: Any amendment as to the terms of this Agreement shall be placed in writing, passed and approved by the City Council and the Goodnews Bay Water & Sewer Utility Board- Board of Directors and signed by the Mayor of the CITY and the President of the Goodnews Bay Water & Sewer Utility Board- Board of Directors and attached as an addendum to this Agreement.

SECTION 10 - SEVERABILITY

- 10.1 Severability. Any provision or part of this Agreement held to be void or unenforceable under law or regulations shall be deemed deleted and all remaining provisions shall continue with full force and binding.

SECTION 11 - WARRANTIES

- 11.1 Warranties: The CITY makes no warranties, either express or implied as to the condition of any buildings, pipes or appurtenances. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD has examined the property covered in this Agreement (insofar as examination is feasible) and herein accepts the property "as is" for the purposes of this Agreement. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall be held harmless for responsibility from environmental contamination occurring or existing before the commencement of this Agreement. CITY shall be held harmless from environmental contamination caused as a result of THE UTILITY BOARD'S operation. The CITY acknowledges that an oil spill occurred on a portion of the property prior to the commencement of this Agreement. Consequently, the CITY shall hold THE GOODNEWS BAY WATER & SEWER UTILITY BOARD harmless from any responsibility regarding the oil spill except to the extent the CITY can show by clear and convincing evidence that THE GOODNEWS BAY WATER & SEWER UTILITY BOARD has also spilled oil at the site, in which case THE UTILITY BOARD'S responsibility shall not exceed its proportionate share based on the amount of oil spilled by each party.

SECTION 12 - ALTERATIONS & IMPROVEMENTS

- 12.1 Alterations and Improvements: THE GOODNEWS BAY WATER & SEWER UTILITY BOARD may make repairs, alterations and improvements to the System without the express permission of the CITY. In fact, it is anticipated that THE GOODNEWS BAY WATER & SEWER UTILITY BOARD will be making improvements and generating new facilities as the current construction grant commences.

SECTION 13 - HOLD HARMLESS AGREEMENT

- 13.1 Hold Harmless Agreement. The CITY and THE GOODNEWS BAY WATER & SEWER UTILITY BOARD each agree to indemnify, defend and hold each other harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, arising out of, connected with or resulting from actions of the indemnifying party or its agents, except to the extent caused by the negligence or intentional misconduct of the other party.

SECTION 14 - REPRESENTATIONS & WARRANTIES

- 14.1 Representations and Warranties of the CITY: The CITY represents and warrants that:
- A. The CITY is validly organized and exists as a municipal corporation in the State of Alaska, and has full power and authority to carry on its business as presently conducted.

- B. The CITY owns the property and interests to be transferred to THE GOODNEWS BAY WATER & SEWER UTILITY BOARD pursuant to this Agreement free and clear of all liens, interests, claims and rights of all persons and has the right and power to transfer such property and interests to THE UTILITY BOARD.
- C. The CITY has full power and authority to execute and perform the terms and provisions of this Agreement. The execution and performance of the terms and provisions of this Agreement does not violate any applicable provision of the CITY charter, the CITY ordinances, or state or federal laws or regulations, or other agreements or rules by which it may be bound.
- D. This Agreement has been duly executed and delivered by the CITY and constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except (a) that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, and (b) for the effect of general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or law).
- E. No representation or warranty or information with respect to the property and interests to be transferred to THE GOODNEWS BAY WATER & SEWER UTILITY BOARD pursuant to this Agreement or contained in this Agreement or in any statement, certificate or other document furnished in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statement not false or misleading.
- F. The City and the property and interests to be transferred to THE GOODNEWS BAY WATER & SEWER UTILITY BOARD pursuant to this agreement are in compliance with all applicable laws, regulations and orders.

14.2 Representations and Warranties of THE UTILITY BOARD. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD represents and warrants that:

- A. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD is validly organized and exists as a non-profit corporation in the State of Alaska and had full power and authority to carry on its business as presently conducted.
- B. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD has full power and authority to execute and perform the terms and provisions of this Agreement. The execution and performance of the terms and provisions of this Agreement does not violate any applicable provision of THE GOODNEWS BAY WATER & SEWER UTILITY BOARD Articles of Incorporation, THE GOODNEWS BAY WATER & SEWER UTILITY BOARD bylaws, or state or federal regulations, or other agreements or rules by which it may be bound.
- C. This Agreement has been duly executed and delivered by THE GOODNEWS BAY WATER & SEWER UTILITY BOARD and constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except (a) that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, and (b) for the effect of general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or law).
- D. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD is in compliance with all applicable laws, regulations and orders.

SECTION 15 - SECTION 17 - TERMINATION

- 15.1 Termination Without Cause: Either party to this Agreement shall have the option to terminate this Agreement without cause, upon giving thirty (30) days' notice to the other party. Any obligations of either party accruing during the term of this Agreement shall survive such termination.
- 15.2 Termination for Cause: Either party to this Agreement shall have the option to terminate this Agreement for cause, immediately upon the expiration of thirty (30) days' notice to the other party and a failure of the other party to cure the cause during such period, upon the occurrence of any of the following events:
- (a) the non-terminating party materially breaches any of the terms or provisions of this Agreement;
 - (b) the non-terminating party habitually neglects its or his duties as contemplated under this Agreement; and
 - (c) the non-terminating party is convicted of a felony or a misdemeanor involving moral turpitude.
- If this Agreement is terminated for cause as herein provided in this paragraph, accrued and unpaid compensation due either party prorated as of the date of termination pursuant to this Agreement shall be paid within ten (10) days following the date of termination.

SECTION 16 - EFFECTIVE DATE

- 16.1 Effective Date: This Agreement becomes effective on the day it is fully executed by both parties hereto.

SECTION 17 - GENERAL PROVISIONS

- 17.1 General Provisions:
- (a) United States Currency. All references to dollars in this Agreement refer to United States currency.
 - (b) Waiver. The failure of any party to insist upon the strict performance of any provision of this Agreement or to exercise any right, power, or remedy consequent upon a breach thereof shall not constitute a waiver by said party of any such provision, breach, or subsequent breach of the same or any other provision.
 - (c) Remedies. Except as otherwise provided in this Agreement, the parties shall be entitled to any and all remedies provided by law.
 - (d) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute a single Agreement. This Agreement shall not become binding upon any party unless and until all parties have executed at least one counterpart of this Agreement.
 - (e) Further Actions. The parties hereby agree to take any and all actions and execute, acknowledge, and deliver any and all documents reasonably necessary to effect the purposes of this Agreement.
 - (f) Law Governing. This Agreement shall be interpreted and construed in accordance with, and governed and enforced in all respects by, the laws of the State of Alaska.
 - (g) Binding Effect. The rights, obligations, and liabilities set forth in or arising under this Agreement shall extend to, be binding upon, and inure to the benefit of the parties and their respective successors and assigns.

- (h) Paragraph Headings. The descriptive paragraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall not be held to expand, modify, amplify or aid in the interpretation or construction of this Agreement.
- (i) Interpretation of the Agreement. This Agreement is the result of arm's-length negotiation and accordingly shall not be construed against the drafting party.
- (j) Management Agreement. The parties hereto shall execute and cause to be recorded this Management Agreement.

This Agreement has been reviewed and approved by the City Council of the City of Goodnews Bay, Alaska, and the Board of Directors of Goodnews Bay Water & Sewer Utility Board.

CITY OF GOODNEWS BAY

SIGNATURE: _____ Date: _____
Mayor, City of Goodnews Bay

GOODNEWS BAY WATER & SEWER UTILITY BOARD.

SIGNATURE: _____ Date: _____
President, Goodnews Bay Water & Sewer Utility Board.

Amendment 1
Utility Management Services Agreement
Between
The City of Goodnews Bay
And
Goodnews Bay Water & Sewer Utility Board

SECTION 6- PRIOR AGREEMENTS

- 6.2 All debts and liabilities arising or existing from the operation and maintenance of the community honey bucket haul and washeteria system which pre-date the signing of this agreement are and shall remain the sole responsibility of the City of Goodnews Bay.

SECTION 7- UTILITY REVENUE

- 7.1 Utility Revenue: THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall receive all revenues generated by sales of water, sewer, and laundromat services from the Effective Date of this Agreement forward. THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall from the Effective Date of this Agreement forward collect the CITY's accounts receivable arising in connection with sales of water, sewer and laundromat services in the ordinary course of THE UTILITY BOARD'S collection efforts, but THE GOODNEWS BAY WATER & SEWER UTILITY BOARD shall have no obligation to undertake extraordinary collection efforts, including, without limitation, litigation. In the case of the collection of delinquent revenues which may date back prior to the signing of this Agreement, THE CITY OF GOODNEWS BAY will receive these revenues.

TRADITIONAL VILLAGE COUNCIL OF GOODNEW BAY

SIGNATURE: _____
President, Goodnews Bay
Traditional Village Council

DATE: _____, 1999

CITY OF GOODNEWS BAY

SIGNATURE: _____
Mayor, City of Goodnews Bay

DATE: _____, 1999

THE GOODNEWS BAY WATER AND SEWER UTILITY BOARD

SIGNATURE: _____
Chairman, Goodnews Bay
Water and Sewer Utility Board

DATE: _____, 1999